

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

EDWIN TRONCOSO,

Plaintiff,

v.

MCLANE/SUNEAST, INC., et al

Defendants.

No. 1:24-cv-00568-KES-SAB

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS

Docs. 14, 19, 21

On May 13, 2024, Defendant McLane/Suneast, Inc. (“McLane”) filed a notice of removal asserting that diversity jurisdiction exists because Plaintiff Edwin Troncoso, Defendant McLane, and Defendant Vicky Doe have complete diversity of citizenship; Defendant Jose Alvarado is a fraudulently joined defendant and his citizenship should therefore be disregarded for removal purposes; and the amount in controversy exceeds \$75,000. Doc. 1 at ¶ 11. On June 12, 2024, Plaintiff filed a motion to remand this action to Merced County Superior Court pursuant to 28 U.S.C. § 1447. Doc. 14. The motion was referred to the assigned United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. Doc. 15.

On August 27, 2024, the magistrate judge filed findings and recommendations recommending that Plaintiff’s motion to remand be granted. Doc. 19. The magistrate judge found the amount in controversy exceeds \$75,000. *Id.* at 3–11. However, the magistrate judge also found that McLane had failed to establish that Defendant Alvarado was fraudulently joined. The magistrate judge found a non-fanciful possibility that Plaintiff could state an intentional

1 infliction of emotional distress (“IIED”) claim after amendment against Defendant Alvarado,  
2 relying in part on plaintiff’s proffer at the hearing of additional allegations that could state an  
3 IIED claim upon amendment to the complaint. *Id.* at 11–18. Accordingly, the magistrate judge  
4 found that Alvarado’s citizenship must be considered, and because Plaintiff and Alvarado are  
5 both citizens of California, found the Court lacked jurisdiction under 28 U.S.C. § 1332. *Id.* at 18.

6 The findings and recommendations were served on the parties and contained notice that  
7 any objections were to be filed within fourteen (14) days from the date of service. On September  
8 10, 2024, Defendant McLane timely filed objections. Doc. 21.

9 Defendant objects to the finding that Plaintiff’s additional proffered allegations could  
10 potentially state an IIED claim against Defendant Alvarado. Doc. 21 at 6–11. Defendant argues  
11 that the alleged conduct could not be the basis for an IIED claim because it was not sufficiently  
12 outrageous and did not exceed the range of typical managerial actions. Doc. 21 at 6–11.  
13 However, Plaintiff proffered additional allegations of retaliatory conduct by Alvarado beyond  
14 standard management activity, including that Alvarado deceptively misled Plaintiff and violated  
15 Plaintiff’s right to bid on other jobs in retaliation for Plaintiff’s reports of sexual harassment. As  
16 found in the findings and recommendations, given such additional proffered allegations there is a  
17 non-fanciful possibility that Plaintiff may state an IIED claim against Alvarado in an amended  
18 complaint. *See, e.g., Dagley v. Target Corp., Inc.*, No. CV 09-1330-VBF (AGRx), 2009 WL  
19 910558 (C.D. Cal. Mar. 31, at \*3 (reasoning that “if a plaintiff alleges conduct other than that  
20 inherent in terminating an employee, such as violating a fundamental interest of the employee...in  
21 a deceptive manner that results in the plaintiff being denied rights granted to other employees,  
22 then a claim for intentional infliction of emotional distress is possible against a supervisor”);  
23 *Barsell v. Urb. Outfitters, Inc.*, No. CV0902604MMMRZX, 2009 WL 1916495 (C.D. Cal. July 1,  
24 2009), at \*6–7.

25 In accordance with 28 U.S.C. § 636(b)(1), the Court has conducted a de novo review of  
26 this case. Having carefully reviewed the file, the Court concludes that the findings and  
27 recommendations are supported by the record and proper analysis.

28 ///

Accordingly, IT IS HEREBY ORDERED:

1. The findings and recommendations issued August 27, 2024, Doc. 19, are ADOPTED IN FULL;
2. Plaintiff's motion to remand this case to Merced County Superior Court, Doc. 14, is GRANTED;
3. This action is REMANDED to Merced County Superior Court; and
4. The Clerk of Court is directed to close this case and to serve a copy of this Order on the clerk of the Merced County Superior Court.

IT IS SO ORDERED.

Dated: December 29, 2024

  
UNITED STATES DISTRICT JUDGE